Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79--781

OSGOOD D. HAMLIN, Petitioner,

versus

F. GREGORIE & SON, ESTHER GREGORIE, MARY ALLSTON GREGORIE, SARAH GREGORIE MILLER, FERDINAND GREGORIE, JR., ELIZABETH GREGORIE PENNERWILL, ANN GREGORIE GREENE, JULIAN WEAVER GRAY, ESTHER ROYALL GRAY SWAIN, SARAH WINDON GRAY MILLS, and JOHN EVERETT GRAY, Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

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OPINIONS BELOW

The opinion of the Supreme Court of South Carolina is not as yet officially reported, but is appended to the Petition for a Writ of Certiorari. The opinion was delivered on July 24, 1979, Opinion No. 21009, Petition for Rehearing denied on October 16, 1979. Petition for Rehearing is appended to Respondents' Brief. [Appendix I]

JURISDICTION

The Petition for Certiorari is not within the jurisdiction of the United States Supreme Court for the following reasons:

(1) PETITION DOES NOT CONFORM TO U. S. CODE.

The Petition is not taken in conformity to 28 U.S.C. 1257(3), which states as follows:

> "Final judgments or decrees rendered by the highest court of a state in which a decision could be had may be reviewed by the Supreme Court as follows:
>
> * * *
>
> 'By Writ of Certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State Statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right or privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.' June 25, 1948, C. 646, 62 Stat. 292.
>
> * * *"

The Petition simply does not call into play any state statute, directly or through Judicial interpretation, as being repugnant to the United States Constitution. Nor is any right "claimed under the Constitution" a right guaranteed by the Fourteenth Amendment to the United States Constitution. Further, no such right, in any event, was abridged.

(2) NO FEDERAL QUESTION

As will be reflected in the ARGUMENT section, infra, no federal question exists in this case, and none such was necessary to the judgment, or in fact was made the ground for it. Nor did the record show on what ground the decision of the matter in which the federal question is alleged to have been involved was made. Bonner v. Gorman, 213 U.S. 86 (1909).

Respondents assume that Petitioner contends that South Carolina Summary Judgment Rule was unconstitutionally applied to deprive Petitioner of a protected right.

(3) FEDERAL QUESTION NOT TIMELY OR PROPERLY RAISED

The federal question sought to be reviewed, though Respondents continue to assert the non-existence of any federal question, was not timely or properly raised at any stage of the state court proceedings, nor was a federal question ever discussed or passed upon by any

state trial or appellate court.

Petitioner asserts in the Petition for Certiorari itself the following statements:

> "The Petitioner timely petitioned for hearing and raised the constitutional question that affirmation of the Order of the lower court deprived the Petitioner of his property without due process of law. This was the first opportunity to raise this issue, as the affirmation by the Supreme Court of South Carolina of the Order of the lower court effectively changed the rule of permissible action to be taken in a summary judgment, Brinkerhoff-Farris Trust & Savings Company v. Hill, 281 U.S. 673 (1930). [Petition for Writ of Certiorari, p. 6][Emphasis Added]
>
> * * *
>
> "The due process claim was raised at the first available opportunity on Petition for Rehearing before the South Carolina Supreme Court." [Petition for Writ of Certiorari, p. 8][Emphasis added.]
>
> * * *

Petitioner unequivocably states that the due process claim was raised

in the Petition for Rehearing. Respondents have appended Petitioner's Petition for Rehearing to Respondents' Brief [Appendix I] for this Court's review. The Petition for Rehearing is totally void of any mention, discussion, inference or claim of any constitutional or federal question. The Petition for Rehearing addresses only two arguments: the first being that the State Supreme Court overlooked the evidence of record as contained in the Transcript of Record; and the second, that the judgment would cause uncertainty for real estate titles in South Carolina. As can be readily seen from the Petition itself, no federal question was mentioned, nor were there circumstances or facts mentioned in which any state court had transgressed the due process clause of the Fourteenth Amendment. Nor is there any room for inference that the denial of the Petition for Rehearing required or even permitted the passing upon a federal question.

In citing Brinkerhoff-Farris Trust & Savings Company v. Hill (supra), the Petitioner failed to distinguish the fact that in the Brinkerhoff-Farris case, the Plaintiff seasonably filed a petition for a rehearing in which it specifically set out the circumstances, facts and manner in which the lower court had transgressed the due process clause of the Fourteenth Amendment. Brinkerhoff-Farris Trust & Savings Company, at page 678. [Emphasis Added]

For lack of a better description,

Petitioner has simply misstated the facts in his presentation, wherein he contends that a federal question was raised, the time at which it was raised, and the manner in which it was raised, together with the method of raising it.

The Petitioner did accurately report the manner in which the federal question was passed upon by the court. In his Petition for Certiorari at page 6, Petitioner states:

> "The Supreme Court of South Carolina did not expressly pass on the constitutional issues so raised..." [Petition for Writ of Certiorari, p. 6]

(4) JUDGMENT RESTS ON ADEQUATE NON-FEDERAL GROUNDS

The judgment of the South Carolina Supreme Court rests entirely on adequate non-federal grounds. The only question before the South Carolina Supreme Court was, in fact, whether or not there existed a genuine issue of material fact, which question was answered in the negative against the interest of the Petitioner. None of the justices were in the slightest disagreement as to any federal question [Petitioner's Appendix A, p. A-21].

It is well settled that the United States Supreme Court's power to review decisions of state courts is limited to their decisions on federal questions. [Numerous citations omitted]

QUESTIONS PRESENTED

Petitioner's styling of the question presented for review is so general and vague that your Respondents have difficulty in ascertaining what specific questions of constitutional and/or federal law they are required to answer under the facts of this case. Respondents in a good faith effort to define the question offer the following:

Did the South Carolina Supreme Court in affirming (without oral argument) the trial court's granting of summary judgment against Petitioner deny Petitioner of a constitutionally protected right?

STATEMENT OF THE CASE

Petitioner's version of the stated facts is at variance in important respects with the actual finding. Hence, in the interest of brevity and accuracy, Respondents adopt as our Statement of Facts the complete findings of the trial court as sustained by the South Carolina Supreme Court. [Petitioner's Appendix A-2 through A-5] The trial court granted summary judgment for Respondents, declaring the deed in question an equitable mortgage and referred the case to the Master-in-Equity for an accounting. After the accounting is conducted, the trial court is directed to enter judgment for the amount found to be due in favor of the Petitioner. Foreclosure and sale are provided for in the event the Respondents are unable to pay the debt.

ARGUMENT

THE STATE COURT PROCEDURE AT THE TRIAL AND/OR APPELLATE LEVEL DID NOT ABRIDGE ANY OF PETITIONER'S CONSTITUTIONALLY PROTECTED RIGHTS.

Plaintiff contends throughout his Petition that the granting of summary judgment denied him the opportunity to be heard and was, therefore, a fundamental violation of due process of law.

Petitioner alleges that he was not given a "full hearing" or "appropriate hearing" and bases his claim entirely upon this fact. It is somewhat uncertain whether or not he contends that the lack of a hearing at the trial court stage, or the appeal without oral argument to the South Carolina Supreme Court, or the combination of the two hearings constitutes the gravamen of his complaint; but, Respondents attempt to address all three contentions. Petitioner's assertion that he was denied a hearing is initially controverted by the very fact that Petitioner through his counsel appeared at numerous motion hearings including the hearing for summary judgment of which he now complains.

The question, therefore, becomes a question of definition of the concept "full hearing" as claimed by Petitioner to have been denied by the state court and secondly and cumulatively, the question of what constitues procedural due process under the Fourteenth Amendment of the Constitution of the United

States (Petitioner made no reference to the Fifth Amendment of the United States Constitution).

There have been a great number of cases which give guidance in determining the procedural standards for civil and criminal trials in state court proceedings, and also, which give guidelines for determining in general what constitutes procedural due process under the United States Constitution.

The same argument that is being made in the instant case can best be answered by an exact quotation from Twining v. New Jersey, 211 U.S. 78, 111 (1908) as follows:

> "Due process requires that the court which assumes to determine the rights of parties shall have jurisdiction [citations omitted], and that there shall be notice and opportunity for hearing given the parties [citations omitted]. Subject to these two fundamental conditions, which seem to be universally prescribed in all systems of law established by civilized countries, this court has, up to this time, sustained all state laws, statutory or judicially declared, regulating procedure, evidence, and methods of trial, and held them to be consistent with due process of law [Citations omitted].

> Among the most notable of these decisions are those sustaining the denial of jury trial, both in civil and criminal cases ..." Twining v. New Jersey 211, U.S. 78.

The cases proceed upon the theory that, given a court of justice which has jurisdiction, and acts, not arbitrarily, but in conformity with the general law, upon evidence and after inquiry made with notice to the parties effected and opportunity to be heard, then all the requirements of due process, so far as it relates to procedure in court and methods of trial and character and effect of evidence are complied with. Twining, (supra)

Petitioner makes no allegation that the state courts lack jurisdiction or that they acted arbitrarily or for that matter that they did not act in conformity with the general law. Nor is contest made that notice of hearing was withheld or that at least some inquiry was made, or even that evidence was presented. Rather, Petitioner contests the extent of inquiry and the sufficiency of evidence made or presented at the summary judgment hearing in question.

Clearly, Petitioner was given notice and an opportunity to be heard as evidenced by his attendence at the various motion hearings involved. With regard to the summary judgment hearing, it is important to note that the notice for summary judgment was filed on Febru-

ary 2, 1978, and that the hearing for same was held on June 12, 1978; more than four months after the initial notification of the motion hearing. The case, itself, had been filed since October 24, 1974, nearly four years prior to the hearing on the motion for summary judgment. [Respondents' state court Appellant Brief, p. 18]

Notice and opportunity for hearing having been given, all of the requirements for procedural due process, so far as it related to procedure in court and methods of trial and character and effective evidence, were complied with.

Additionally, the exhaustive nature of the summary judgment hearing before a circuit court judge and the exhaustive nature of the briefs filed therein by both Petitioner and Respondents, together with the lengthy order eventually rendered by the trial court judge, after nearly four months of consideration, surely meets any reasonable definition of "a full and fair hearing".

Once the procedural due process requirements have been met, this court has made it clear that the Fourteenth Amendment extends no further to determine by what process legal rights may be asserted, or legal obligations enforced in state court. Louisville & N. R. Co. v. Schmidt, 177 U.S. 236.

Petitioner has put forth the somewhat confusing contention in his Petition that his denial of due process

stems also from the refusal of the South Carolina Supreme Court to allow him oral arguments on appeal. Quoting from the Petition for Certiorari at page 9, Petitioner concurs in Respondents' position that no claim has been presented for resolution in the United States Supreme Court, but at the same time, indicates that the State Supreme Court denied him a hearing:

> "In the instant case, however, the South Carolina Supreme Court did not merely affirm an erroneous lower court decision after an appropriate hearing which, it is conceded, would present no claim for resolution in this court [cases omitted] rather, without hearing, the State Supreme Court affirmed an erronous decision, and necessarily decided that a court of original jurisdiction can deny litigants any hearing for the resolution of disputed facts ..." [Emphasis added]

Petitioner is apparently unaware that the scope of argument allowed before the South Carolina Supreme Court on appeal is not altered whether the case is heard on briefs, alone, or is heard with oral argument.

Petitioner's real objection is not so much the existence of the power of the State Supreme Court to affirm the granting of summary judgment by the

circuit court, but rather the Petitioner would contend that it is the fact that when the power is exercised by the State Supreme Court, it is not subject to review, and may be said to be unlimited.

Similar questions have been raised to this court before, and the cases have uniformly held that the power of the state supreme court is limited, but it is limited by the obligation to administer justice. The power to render a final judgment must be lodged somewhere, and in every case a point is reached where litigation must cease. What that point is can be determined by the legislative power of the state, for the right of appeal is not essential to due process of law. Twining v. New Jersey, (supra)

Respondents do not perceive that Petitioner challenges the constitutionality of South Carolina Circuit Court Rule 44; however, Petitioner does make the assertion that South Carolina Circuit Court Rule 44 was changed in the instant case from previous South Carolina court rulings.

Even were this to be the case, which it is not, this fact would give the Petitioner no relief for right or review by the United States Supreme Court.

> "That the mere fact that a State Court has rendered an erroneous decision on a question of state law, or has over-

> ruled principles or doctrines established by a previous decision on which a party relied, does not give rise to a claim under the Fourteenth Amendment or otherwise confer appellate jurisdiction on this court." Brinkerhoff-Farris Trust & Savings Company v. Hill (supra, p. 670).

South Carolina Circuit Court Rule 44 was, of course, not changed, and without rearguing the brief submitted in the State Supreme Court, the lower court concluded that no genuine issue of material fact existed and therefore rendered its order. In the Supreme Court, Petitioner made numerous assertions that there were disputed facts and the State Supreme Court, relying on past State and federal law, found that continued assertions that there were disputed facts did not make undisputed facts into disputed facts.

The State Supreme Court relied notably upon Zoby v. American Fidelity Co., 242 F.2d 76 (4th Cir. 1957).

Also relied upon was Lawrence H. Ayers v. Past-time Amusement Company, 283 F.Sup. 773 (1968), wherein the court held that

> "Neither the conclusionary allegations, nor the general denials perputrated by an adverse party make the existence of a disputed fact." (Ayers, supra, p. 775.)

When one examines the bare allegations made by Petitioner throughout the within case, and compares the same to the general law of property in the state it becomes patently clear that there is no controversy, and that the trial judge correctly applied the law to the facts in his granting of summary judgment.

CONCLUSION

In reading the State Court's opinion and then comparing Petitioner's averments, it becomes clear that the reasons for the Petition are fictitious and frivilous, and that the Petitioner is merely requesting this court to second-guess the South Carolina Supreme Court on the merits of a case which was decided totally on non-federal grounds.

Respondents therefore respectfully requests that the Petition for Certiorari be denied and that this court do award its damages pursuant to Rule 56(4) of the rules of this court, if Petition for Writ of Certiorari be denied, upon the ground that it is manifest that there is no ground for granting such a writ and that the Petitioner proceeded in an effort to delay further this case.

Respectfully submitted,

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APPENDIX

APPENDIX

APPENDIX I: Petition for Rehearing

The appellant, Osgood D. Hamlin, respectfully petitions the Court for a rehearing of the appeal in this case, on the following grounds:

I.

The lower court granted summary judgment to the respondents herein, on the ground that the pretrial record of this case fails to disclose a genuine issue of fact on the central issue of the case, namely, whether the parties to the 1961 transaction at issue intended to effect an absolute conveyance, accompanied by a repurchase option; or whether they intended to create a mortgage.

The appellant herein submits that the Court has overlooked the evidence of record as contained in the Transcript of Record, which points to the existence of genuine issues of fact upon virtually every point considered to be free of conflict by the lower court. Among these parts of the record which create genuine issues of fact where the lower court found none, are the following:

a. The lower court held (Tr. 204) that Mr. Gregorie had the option of saving his business by borrowing money on the security of Oakland Plantation, whereas the evidence of Mr. Gregorie's attorney was that Mr. Gregorie was unable to borrow anything. (Tr. 34.)

b. The lower court found that, without dispute, a debt survived the conveyance, whereas the evidence shows a flat denial by the appellant that any such obligation survived said conveyance. (Tr. 198.)

c. The lower court held that, without dispute, there was no evidence that the appellant desired to purchase the plantation, whereas the uncontradicted evidence from the appellant himself is that he did wish to make the purchase. (Tr. 196.)

d. The lower court held that, without dispute, the purchase price was inadequate, whereas the only evidence of the plantation's worth, in 1961, was from the appellant himself, who testified that it was worth no more than he paid for it, the respondents having offered no direct evidence whatever as to its value at that time.

e. The lower court held that, without dispute, this transaction originated in a request by Gregorie for a loan from appellant, whereas there is no evidence whatever in this pretrial record that such was the case. The only evidence of what Gregorie requested of the appellant was that such request was for a one-year, and then a five-year, option.

f. The lower court wholly disregarded the plain terms of the option contract, which declared that said contract contained and stated the entire agreement of the parties, said contract having been drafted, not by appellant's attorney but rather by the attorney of the vendor, Gregorie.

g. The lower court disregarded the evidence that the parties entered into two transactions at about the same time, one being a sale with option to repurchase, and the other being a regular mortgage. This was evidence overlooked by the lower court, that the vendor well knew the distinction between the two.

h. The lower court overlooked the evidence that the appellant has paid the taxes on the property, this circumstance pointing to ownership, and not security.

II.

Appellant submits to the Court that the granting of summary judgment, in the face of the documentation which accompanied this transaction, will have an unlooked for and undesirable impact upon the status and security of real estate titles in South Carolina. On the one hand, conveyancers have always known that a deed, with or without a contemporaneous option to repurchase, may

later be challenged and asserted to be a mere mortgage. However, the unequivocal declaration of the parties, that the entire agreement between them is correctly expressed in the deed and option to repurchase, should be, at the very least, a circumstance pointing to the inference that an absolute conveyance, and not a mere mortgage, was the intent of the parties in such a situation. The lower court's decision in the instance case casts doubt upon whether the grantee even has the right to contest, by his own assertions of intention and by pointing to the circumstances of the transaction, that a true sale with option was intended. If the lower court's opinion is to be reported, then the conveyancing Bar must henceforth assume that every conveyance accompanied by an option to repurchase is a mortgage, and that no accompanying documentation will be permitted to show otherwise. Appellant submits that the impact upon titles, and especially commercial titles, would be substantial and untoward.

III.

Appellant submits that the lower court revealed its misconception of its function under Rule 44 when the Court stated: "I must search for the intention of the parties at the time of the transaction and not as any of them may interpret their intentions at this time." (Tr. 204.) Undeniably, it was not the proper function of the lower court, pursuant to a motion for summary judgment, to "search for the intention

of the parties." It was the sole function of the lower court to discern whether there was any genuine issue of fact as to what that intention was. Instead, the lower court proceeded to make factual findings upon said intention, as by way of trial of the case.

Respectfully submitted,

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August 3, 1979.

CERTIFICATE OF COUNSEL

I Robert E. Kneece, hereby certify the following:

I am an attorney duly admitted to practice before the South Carolina

Supreme Court and other courts and am actively engaged in the practice of law in Columbia, South Carolina.

At the request of counsel for the Appellant, Osgood D. Hanlin, in the case of F. Gregorie & Son, et al, v. Hanlin (Opinion No. 21009, filed July 24, 1979), I have carefully examined the transcript of record, the briefs and arguments of the parties, and the petition for a rehearing, and I have further discussed this matter with counsel for the Appellant with a view of ascertaining whether, and in what respects, I can give the certificate required under Rule 17 of this Court. Based upon the foregoing, and further based upon my best judgment, it is my professional opinion that there is merit in the grounds of the petition for rehearing, and that a rehearing thereon would be desirable.

I am not concerned in the case.

s/ Robert E. Kneece
Robert E. Kneece
Attorney at Law

Columbia, South Carolina

August 3, 1979.